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# IN THE SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1960**

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## No. 161

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ARTHUR CULOMBE,

*Petitioner,*

—*versus*—

STATE OF CONNECTICUT

*Respondent.*

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

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## PETITIONER'S BRIEF

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## BRIEF FOR THE PETITIONER

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### Opinion Below

The opinion of the Supreme Court of Errors is reported at 147 Conn. 194, 158 A. 2d 239 and appears in Volume IV, Transcript of Record, p. 55 ff.

### Jurisdiction

The judgment of the Supreme Court of Errors was entered on February 16, 1960. The petition for a writ of certiorari was filed May 12, 1960, and was granted June 20, 1960. The jurisdiction of this court rests on 28 U.S.C. §1257(3).

## Questions Presented

1. Whether the confession taken from the mentally defective petitioner during the night of Wednesday, February 27, 1957, after five days of questioning, illegal detention, delaying tactics, lack of counsel, and direct use of petitioner's family, was so involuntary as to make its admission a deprivation of petitioner's life without due process of law in violation of the Fourteenth Amendment.

2. Whether the confession induced from the feeble-minded petitioner on Monday, March 4, 1957, four days after he was formally charged with murder, was inadmissible under the Fourteenth Amendment by reason of the deceit and misrepresentation used by police to deprive him of the services of his counsel.

3. Whether the confession elicited from the mentally-defective petitioner on Sunday, March 3, 1957, three days after he was charged with murder was inadmissible under the Fourteenth Amendment because of psychological pressures exerted and absence of court-appointed counsel.

## Constitutional Provision Involved

The constitutional provision involved is the Fourteenth Amendment.

## Statutory Provisions Involved

The statutes involved are Conn. Stat. §195d (1955 Supp.), now Conn. Stat. §6-49 (1958), *infra*, Appendix A, p. A-1; and Conn. Stat. §8796 (1949), now Conn. Stat. §54-80 (1958), *infra*, p. A-1.

## Statement of the Case

(The parenthetical numbers prefaced by the letter "T" refer to the pages of the Transcript of Record, Vols. I-III.)

This case is concerned with the admissibility of three confessions introduced at the murder trial of Arthur Culombe, petitioner.

I. One confession, State's Exhibit Z-1, was taken on Wednesday, February 27, 1957, certain contents of which were admitted into evidence (T. 605).

II. A second confession, State's Exhibit EE, was induced Sunday, March 3, 1957, and was admitted into evidence at the trial of petitioner (T. 952).

III. The third confession, State's Exhibit Z, was obtained on Monday, March 4, 1957, and was also admitted into evidence (T. 952).

On December 15, 1956, the bodies of Edward J. Kurpiewski and Daniel J. Janowski were found in a gasoline station in New Britain, Connecticut. An autopsy performed on the bodies of these men revealed that they died as a result of gunshot wounds in the head.

On December 18, 1956, Lt. Rome of the Connecticut State Police began an investigation into these New Britain shootings (T. 239). On February 23, 1957, the petitioner Arthur Culombe was taken into police custody at 2:35 P.M. as a result of this investigation (T. 168).

Culombe is a 33-year-old mental defective with a mental age of nine to nine and one-half, and an intelligence quotient of sixty (T: 1180, 1289). He is either a moron (T. 1182, 1187, 1283) or an imbecile (T. 1219). An illiterate, he is unable to read and write except his own signature (T. 1181). Culombe is "enormously suggestible . . . and easily

influenced" (T. 1189, 1308-9), and "acts purely under stress as to reasoning power" (T. 1182).

He left school at 16 (T. 1168), at which time he had been in a special third grade class for slow learners for six years (T. 1168, 1193-4). After leaving school he was committed to two state institutions for the feeble-minded (T. 1172, 1199, 1218-20, 1223-24).

The three confessions were elicited during a ten-day period, beginning Saturday, February 23, 1957 through Monday, March 4, 1957.

SATURDAY, FEBRUARY 23, 1957

On Saturday, February 23, 1957, Culombe was escorted to State Police Headquarters at 2:35 P.M. (T. 168). After Lt. Rome, officer-in-charge, questioned him (T. 613), Culombe was taken for a ride to Coventry and Rocky Hill for the purpose of being identified (T. 614-616). This trip was taken in the company of three police officers and Joseph Taborsky, the other suspect (T. 169-241).

During this trip the State Police allowed Culombe and Taborsky to share a bottle of whiskey which Taborsky had in his possession when he was arrested earlier that day (T. 180-184, 221, 225, 318, 615, 617, 839, 840). The police questioned the suspects throughout the three-hour ride (T. 445).

They returned to State Police Headquarters at 6 P.M. (T. 180-241). Culombe was questioned by Sgt. Paige, Lt. Rome's assistant, from 6 P.M. to 8:15 P.M. (T. 191, 244, 260, 322), at which time he was driven home to show the police his gun collection (T. 169).

Arriving back at headquarters, Culombe was interrogated until midnight (T. 322, 625-30). Rome questioned him one and one-half to two hours (T. 244, 268, 338).

When Rome was not questioning Culombe, other officers were questioning him (T. 169-339). Altogether, Culombe was questioned by three or four officers (T. 625).

At 10 P.M., midway in the course of the interrogation, Lt. Rome placed Culombe under arrest (T. 330) on suspicion of having committed a felony (Conn. Stat. §195) (1955 Supp.), *infra*, Appendix A, p. A-1).

While questioning Culombe Saturday evening, the police ascertained that he was illiterate (T. 276), and that he had been in an institution for the feeble-minded (T. 182, 262-264).

He went to bed at midnight Saturday (T. 658).

Culombe was in the company of and questioned by at least four policemen from 2:30 P.M., until midnight Saturday (T. 658)—a total of more than nine hours.

SUNDAY, FEBRUARY 24, 1957

On Sunday, Culombe was questioned by State Police Officers and a City of Hartford detective (T. 196). Culombe was kept in his cell until mid-afternoon, when he was brought upstairs for a line-up (T. 631). Later that afternoon, Sgt. Paige interrogated Culombe (T. 175, 439). Then the Hartford detective continued the questioning (T. 634). Later, Sgt. Paige joined the detective in this questioning (T. 634).

After supper, Paige and the Hartford detective resumed the interrogation, questioning Culombe concerning several burglaries (T. 196). Later, Paige questioned Culombe alone on the subject of stolen canned goods found in Culombe's house (T. 538, 197). Culombe orally confessed at this time to stealing these provisions (T. 633). There-

after, Hartford police again questioned Culombe (T. 633). Lt. Rome also questioned Culombe Sunday night (T. 538). He was finally taken to his cell late that night (T. 637).

Culombe had been interrogated for at least several hours during the afternoon and evening by three officers.

MONDAY, FEBRUARY 25, 1957

At 9 A.M., on the third day of his detention, Culombe was brought upstairs from his cell in the State Police Headquarters for further questioning (T. 357-359). Rome promised Culombe that he would be able to obtain counsel that morning (T. 546, 638). At noon, after about two hours of questioning, Culombe was taken to the New Britain police headquarters (T. 248). There were crowds on both sides of the street outside police headquarters (T. 546). The police first kept Culombe in the Detective Bureau for a couple of hours (T. 639), then booked him for breach of peace with bail set at $25,000 (T. 248). He was then fingerprinted and photographed (T. 596).

The police took Culombe out through the crowd, and drove him to State Police Headquarters in Hartford (T. 641). Officers questioned Culombe during the drive (T. 642). He was logged in at State Police Headquarters at 2 P.M. (T. 545).

After being questioned by a New Britain detective (T. 642), Culombe was taken to his cell for about an hour. Questioning was then resumed by Sgt. Paige (T. 643, 696), Lt. Rome and one other officer (T. 643).

That evening Culombe was further interrogated by Lt. Rome (T. 248-249, 545), Sgt. Paige (T. 404, 441) and Officer Jaconis (T. 559). A statement was taken at that time concerning stolen canned goods found in Culombe's home (T. 559-705).

Culombe was questioned for two hours in the morning and for similar periods in the afternoon and evening—a total of 4 to 7 hours.

There is evidence that Culombe was sworn at and threatened (T. 649), kicked in the ribs (T. 645), and his wife threatened with prosecution concerning theft of the canned goods if he did not confess (T. 645-646).

TUESDAY, FEBRUARY 26, 1957

On the morning of the fourth day of Culombe's detention, the State Police took him to the New Britain Police Court (T. 545). Crowds lined the streets in front of the court (T. 546). Threats were made by members of the mob (T. 855). Culombe was afraid of the crowd (T. 652).

In the courtroom, photographers took flashbulb pictures of Culombe (T. 547) who, during the entire proceeding, was confined in a wire cage at the rear of the room (T. 247). There was a large crowd between the cage and the judge's bench which prevented Culombe from seeing or hearing the judge or otherwise participating in the proceeding (T. 650-651).

Culombe was not represented by counsel (T. 297), although Connecticut law provides for the appearance of the Public Defender at such a local court. Conn. Stat. §8796 (1949), Appendix A, p. A-1. Culombe was charged with breach of the peace, bond was set in the amount of $25,000, and the case was continued for a week (T. 249-767).

The court issued a mittimus ordering that Culombe be taken to and kept in the county jail "until he be discharged by due process of law" (T. 768).

The State Police disobeyed the mittimus (T. 952). They did not take him directly to the county jail, but held him at headquarters for interrogation for at least 6 hours that

day and night before taking him to the Hartford County Jail at 8:50 P.M. (T. 769). First, they questioned him at the scene of the shooting (T. 548), and then took him to headquarters (T. 303) where Sgt. Paige, Lt. Rome and another officer interrogated him for 2 more hours (T. 547-599, 654).

While Culombe was being questioned, his wife and two minor daughters were brought to headquarters against their will. The police caused Mrs. Culombe to confront and accuse her husband (T. 251, 403, 539, 556).

Lt. Rome's assistant, Sgt. Paige, characterized this questioning period and confrontation of Culombe by his wife and family as "an ordeal" for Culombe (T. 449).

At 7:30 P.M., petitioner was taken to his cell at State Police Headquarters, but he was not left alone. Sgt. Paige went with him and questioned him further (T. 423-24, 452-53).

Paige stopped questioning Culombe only because the latter was so upset that he broke down and sobbed (T. 400). Thereupon, he was finally taken to the county jail at 8:50 P.M. (T. 769-770).

By the time Culombe was finally taken to the county jail he had been under constant police surveillance for more than 9 hours that day and night, and had been interrogated most of that time. Although the police deny having beaten him, the jailer at Hartford County Jail testified that Culombe told him that he "was kicked around by the State Police" (T. 712).

WEDNESDAY, FEBRUARY 27, 1957

At 10 A.M., on the morning of the accused's fifth day of confinement (T. 769-770), the State Police knowingly violated the mittimus issued by the New Britain Police Court

(T. 427), by illegally removing Culombe against his will from the county jail. The State Police unlawfully kept him in their custody until a confession was elicited (T. 952).

Culombe was intensively questioned from 1:30 P.M. on Wednesday (T. 399) until the early hours of Thursday morning (T. 504), when he finally signed a confession (Exhibit Z-1), in which he admitted being present at the time of the robbery, but denied any killing.

At 3:30 P.M., after two hours of questioning at Headquarters by three officers in succession (T. 253, 494, 582), Culombe was taken to his home (T. 560). He was accompanied by four police officers (T. 388). Lt. Rome and others questioned him on the way home, at his home, and while driving in and about Hartford (T. 389-394). Some time after 6 P.M., Culombe was returned to State Police Headquarters, and subsequent to a period of questioning (T. 499-501), he had dinner in the company of the State Police officers (T. 501).

At 8 P.M., intensive interrogations were resumed (T. 399, 572), conducted by Lt. Rome, two other State Police officers and a county detective. Sgt. Paige testified that at this time Culombe was tired, his clothing was a "sorry sight," and he had "been through quite an ordeal" (T. 400). At 10:55 P.M., a written statement from Culombe was begun (T. 486-487, 502; State's Exhibit Z-1). The portion of that statement relevant to the New Britain shooting was started at 12:30 A.M., Thursday morning (T. 504).

The method used for constructing this statement was as follows: Lt. Rome would ask a question; Culombe would answer; Rome would put this answer into narrative form; and then this narrative would be typed (T. 502, 572, 573). The statement was composed by Rome using his own words, syntax and grammar rather than that of Culombe (T. 400, 580, 581). The statement was read to Culombe, who,

being illiterate, was unable to read it himself. He then signed it (State's Exhibit Z-1). In this statement he admitted his presence at the New Britain shooting, but denied killing anyone, stating that Taborsky, another suspect, killed both victims. This statement was completed at approximately 1 A.M., Thursday morning (T. 398).

Culombe had been questioned for almost twelve hours that day and night, his only break from formal interrogation occurring when he ate with the police. Thus, five days after Culombe was taken into custody a confession was finally extracted.

During these five days of questioning, Culombe had been interrogated at least 9 hours on Saturday, several hours in the afternoon and evening on Sunday, 4 to 7 hours on Monday, 7 hours on Tuesday, and more than 11 hours on Wednesday—a total in excess of 31 hours.

The prolonged and intensive questioning by the police was aggravated not only by petitioner's feeble-mindedness, but by the lack of counsel, the illegal detention, the delaying tactics, and the use of petitioner's wife and family.

(a) Culombe lacked counsel from his arrest on Saturday, February 23, 1957 until the following Friday, March 1, when the court appointed a Special Public Defender (T. 742). During the five days preceding the confession induced late Wednesday night, February 27, Culombe had asked for an attorney on at least 6 occasions.

Culombe first requested counsel on Saturday evening (T. 304, 511, 626, 688, 689). Counsel was discussed Sunday night by Culombe and Lt. Rome (T. 359). On Monday morning, Lt. Rome promised Culombe that he would have an opportunity to get counsel that morning (T. 546, 638, 639), but the promise was unfulfilled (T. 641). Lt. Rome denied Culombe's request for an attorney Monday night

(T. 645). Culombe was told by Rome that he would be able to retain counsel on Tuesday morning (T. 648), but never was given the chance (T. 650). Tuesday afternoon, Culombe asked for a lawyer (T. 863). Culombe asked to see the State's Attorney on Wednesday afternoon, but instead he was interrogated further (T. 666).

On Thursday, February 28, twelve hours after his confession, Culombe was brought before the Superior Court, where he was promised counsel of his choice if possible (T. 1023). Special Public Defender Thomas F. McDonough was actually appointed on Friday, March 1 and saw Culombe for the first time either on that or the following day (T. 675).

(b) The State Police extended the period during which Culombe was questioned by delaying tactics and illegal detention. The statute under which Culombe was arrested on suspicion of felony Saturday night (T. 330) recites that any person so arrested "shall be presented with reasonable promptness before proper authority." Conn. Stat. §195d (1955 Supp.), *infra*, Appendix A, p. A-1. Culombe was not presented on a felony charge until the following Thursday in Superior Court, six days later.

Lt. Rome conceded that Culombe could have been booked on Sunday and presented on Monday, but was not (T. 333). On Monday, Culombe was taken to New Britain. The State Police allowed photographers to take pictures of petitioner for an hour or so, thereby causing a delay which prevented his presentment in police court that day (T. 333).

Lt. Rome testified that this postponement was to enable the police to question the suspects further (T. 334-335).

Culombe was finally presented in New Britain Police Court on Tuesday, three days after arrest. He was not presented on a felony, but on a technical charge of breach of peace (T. 332). The accused was not warned of his

rights nor allowed to approach the bench in order to get a hearing. The case was continued. The purpose of this procedure in the New Britain Police Court was to enable the police to make further interrogations (T. 302).

After this proceeding, Culombe was detained in violation of the mittimus for the next seven hours. The next day, Culombe was unlawfully removed from the county jail (T. 952) and taken to State Police Headquarters. It was during this latter unlawful detention that Culombe was induced to confess his presence at the scene of the shootings.

The postponement of Culombe's presentment and the illegal removal from jail gave the State Police the additional time and opportunity necessary for obtaining this confession (T. 302, 334-335).

(c) The State Police used petitioner's wife and two minor children as instruments to obtain a confession (T. 539). In fact, Lt. Rome declared that the reason he brought Mrs. Culombe to headquarters was "to use her as another way of getting a confession" from her husband (T. 370-1).

Paige questioned Mrs. Culombe at home on Saturday night, with her husband's knowledge (T. 691, 623).

On Sunday night Mrs. Culombe was taken to State Police Headquarters (T. 198-9, 694). Although she did not see her husband, Culombe heard her crying, and recognized her voice and that of Lt. Rome while she was questioned in the next room at headquarters.

On Tuesday, Lt. Rome, after talking to Mrs. Culombe at her home for about one-half hour (T. 249), asked her to come to headquarters (T. 250). Although she did not want to go, especially with the children (T. 722) she was taken to State Police Headquarters accompanied by her thirteen- and five-year-old daughters (T. 525, 721, 725-26).

At headquarters that night the following occurred:

Rome first talked to Mrs. Culombe (T. 250). He then talked to Mrs. Culombe and her husband together (T. 250). In Rome's presence, husband and wife talked together for about 15 minutes (T. 542). Mrs. Culombe told her husband to tell the truth (T. 739), and then accused him of committing the crime (T. 528, 541).

A statement damaging to her father was taken from Joanne, Culombe's thirteen-year-old daughter (T. 529-530). Joanne was also used to elicit a confession when Lt. Rome said to her, in Culombe's presence, "Honey, come here and tell your father what you told us" (T. 553, 657).

Culombe could have seen that his wife was upset at their Tuesday meeting (T. 725-6). Paige said that Culombe was upset this night because he had been talking to his wife (T. 449), and because of the "use" of the family (T. 688). In fact, Culombe was so upset that he sobbed in front of Sgt. Paige when the latter attempted to question him further in his cell after he met with his wife (T. 440, 549, 657).

On Wednesday, Culombe was taken to his home about 4 P.M. where he talked to his wife for approximately 15 minutes (T. 607). Culombe told her that he did not want to cause her any embarrassment insofar as the neighbors were concerned by having the police come to his home (T. 589). Culombe made up his mind to make the statement one-half to one hour after seeing his wife, because of abuse to the family, the pressures exerted upon him, and a desire to be left alone (T. 671-672).

Culombe's five-year-old child, Sandy, appeared sick to him on Wednesday (T. 668).

Culombe was aware that his wife was being questioned by the police on Saturday, Sunday, Tuesday, and Wednesday (T. 702). He was being accused by his wife and

he apprehended that his older daughter was incriminating him (T. 553, 657). He was upset by the use of his wife, the presence of his children at headquarters, and the embarrassment to his family. He said at the trial that he confessed to save his family this embarrassment (T. 669).

THURSDAY, FEBRUARY 28, 1957

Culombe was presented in the Superior Court for Hartford County on a bench warrant (T. 1022). He was charged with murder by the court (T. 1022). At the request of Columbe, the court stated that it would appoint Attorney Thomas F. McDonough, since deceased, as his Special Public Defender if he were available. Culombe was remanded to the custody of the State Police (T. 700, 1024) for further investigation. In the afternoon, Culombe was questioned by New York City detectives about crimes which had been committed within that jurisdiction (T. 443). Culombe remained that night at State Police Headquarters.

FRIDAY, MARCH 1, 1957

Attorney McDonough was appointed counsel for Culombe by the Superior Court for Hartford County (T. 742). Culombe was used in inducing Taborsky to make a confession (T. 748). Culombe was kept at Headquarters for the night.

SATURDAY, MARCH 2, 1957

A state-appointed doctor and a psychiatrist performed an intensive two-hour examination of Culombe in the morning. Although the testimony is ambiguous, McDonough met Culombe for the first time either Saturday, or perhaps, the previous afternoon (T. 675). Culombe remained at State Police Headquarters throughout his eighth day of confinement. He was restless and nervous, according to the police (T. 914). At 10 P.M., Culombe orally admitted to State

Policeman Fersch, his guard, that he had killed the service station attendant (T. 908-909). Fersch took no notes of the contents of this statement (T. 917).

SUNDAY, MARCH 3, 1957

On Sunday morning, Culombe was taken from his cell in State Police Headquarters upstairs to the interrogation room next to Lt. Rome's office (T. 910). There he signed a statement (State's Exhibit EE) in which it was admitted that he killed the attendant.

The same method as that used by Rome on Wednesday night—the paraphrasing in Rome's words of Culombe's answers to interrogatories—was used in drafting and eliciting this confession (T. 910-11, 1092-3).

A State policeman testified that Culombe's answers could have been transcribed (T. 922). He also testified that State's Exhibit EE was the statement of Lt. Rome rather than that of Culombe (T. 922).

Culombe's attorney, the Special Public Defender, was not present during this questioning and had not been notified that such interrogation was to take place (T. 910, 1092).

On Sunday afternoon, Culombe's attorney ordered the State Police to leave Culombe alone and return him to jail (T. 295, 676). Rome knew that it was counsel's prerogative to ask him to transfer Culombe to jail (T. 508). This was done immediately (T. 295).

MONDAY, MARCH 4, 1957

It had been decided by the State Police on Sunday that Culombe should sign another confession (T. 503). This confession was to be an excerpt of the confession taken on Wednesday, February 27 (State's Exhibit Z-1), and would pertain only to the New Britain shooting. As a re-

sult of this decision, a new statement was drawn up by reproducing the Wednesday night confession (Z-1), excluding all material not pertinent to the New Britain crime (T. 503-504).

The time on this excerpted confession was changed by the police from 10:55 P.M., Wednesday, to 12:30 A.M., Thursday morning to coincide with the time when the interrogating officers claimed the statement about New Britain was commenced (T. 504-505).

On Monday, Lt. Rome and Officer O'Brien went to the County Jail, taking with them the pre-typed statement composed the previous day (T. 505). Lt. Rome told Culombe that the visit was "okayed" by his Special Public Defender, and that all he wanted was for Culombe to sign some papers "you forgot to sign" (T. 676). When Culombe said that McDonough had told him he didn't want him to sign anything, Rome said that McDonough "knew about this, and I guess it is alright" (T. 677).

In reality, Culombe's attorney knew nothing about nor approved such an action, and particularly was not apprised of the fact that Rome was going to disobey his specific order to leave his client alone (T. 507-508).

Rome knew that this procedure was against the Special Public Defender's orders (T. 511). When questioned on this matter at the trial by McDonough, Rome said, "I don't take any orders from Mr. McDonough," which answer brought an admonition from the court (T. 507). Lt. Rome testified that he did not feel it necessary to tell Culombe's attorney in advance about the signing (T. 510-511), because he "could do better without" McDonough present (T. 511).

At the trial, the Wednesday night confession, Exhibit Z-1, was discussed and referred to while the jury was present (T. 962-963). In this confession Culombe admitted

to being present at the murder scene, but stated that Taborsky killed both of the deceased (State's Exhibit Z).

The Sunday confession, State's Exhibit EE, was introduced (T. 912) and admitted into evidence (T. 952). Culombe admitted responsibility for the death of one of the deceased in this confession (State's Exhibit EE).

The Monday confession, State's Exhibit Z, was introduced (T. 396) and admitted into evidence (T. 952). This confession, except for a few changes in sentence structure and references to time (T. 504), was a copy of Exhibit Z-1, confession taken the previous Wednesday. In the Monday confession Culombe denied responsibility for either of the murders (State's Exhibit Z).

Culombe was found guilty of murder in the first degree and sentenced to death. The Supreme Court of Errors of the State of Connecticut affirmed the verdict and judgment.

## Summary of Argument

The Supreme Court of Errors of the State of Connecticut erred:

1. In affirming the admission into evidence of the involuntary confession extracted on Wednesday, February 27, 1957, from the feeble-minded petitioner who, without benefit of counsel, was questioned more than thirty-one hours over a five-day period, during which time petitioner was subject to illegal detention and unreasonable delays in his presentment, and in the course of which questioning the police confronted petitioner with his accusing wife and daughter. The admission of this confession conflicts with decisions of this court and has deprived petitioner of his life without the due process of law guaranteed by the Fourteenth Amendment.

2. In affirming the admission into evidence of the confession made by the mentally defective petitioner on Monday, March 4, 1957, four days after he was formally charged with murder, which confession was obtained by the deceit and the false representation of the police when they assured petitioner that his court-appointed counsel had sanctioned his signing the confession; said admission has deprived petitioner of his life without due process of law under the Fourteenth Amendment.

3. In affirming the admission into evidence of the confession made Sunday, March 3, 1957, by the mentally defective petitioner, three days after he was formally charged with murder, the confession having been induced by the employment of psychological pressures by the police in the absence of court-appointed counsel, which admission has deprived petitioner of his life without said due process of law.

## ARGUMENT

This case is concerned with the admissibility of three confessions introduced at the murder trial of petitioner, Arthur Culombe. Each confession is discussed in a separate argument.

### I.

### Petitioner's Confession Made the Night of Wednesday, February 27, 1957, Was Involuntary and Its Use Violated Due Process of Law Under the Fourteenth Amendment.

This case poses the issue as to whether a confession signed by the defendant in the course of extensive and intensive interrogation by the police was involuntary, and thus not admissible at his subsequent trial.

The use of a defendant's confession which was obtained by coercion, whether physical or mental, in a State criminal trial, is forbidden by the Fourteenth Amendment. *Leyra* v. *Denno*, 347 U.S. 556, 558. Even though evidence other than the confession establishes the guilt or corroborates the confession, the presence of an involuntary confession is sufficient reason to set aside the conviction. *Blackburn* v. *Alabama*, 361 U.S. 199, 206.

Controversion of the facts is an inescapable consequence of secret inquisitional practices. *Ashcraft* v. *Tenn.*, 322 U.S. 143, 152. In this case there is evidence, which may be controverted, that petitioner was physically and verbally abused (T. 644-5), threatened (T. 644-6), and put in fear by mobs (T. 652, 656). Under the rule in *Brown* v. *Mississippi*, 297 U.S. 278, these coercive measures would be sufficient to exclude the confession.

Even if the evidence of physical violence is disregarded, the undisputed admissions of the State Police alone significantly raise the constitutional question as whether or not the confession of petitioner was voluntary. This court has the duty to make an independent examination of the record of the trial proceedings when the question of voluntariness of a confession is presented. *Chambers* v. *Florida*, 309 U.S. 227, 228-229. It must look to the undisputed evidence and to the uncontroverted testimony of the defendant. *Gallegos* v. *Nebraska*, 342 U.S. 55, 62.

It is submitted that the undisputed evidence of Culombe's feeble-mindedness, his prolonged and exhaustive questioning, the illegal police procedures, the actual use of petitioner's wife and family to aid in the extraction of a confession, and the lack of requested counsel, indicates that petitioner's mental freedom was so limited as to make his confession on the night of Wednesday, February 27, 1957 involuntary under the Fourteenth Amendment.

(1) *Mental Defectiveness.* Petitioner has been a mental defective since infancy. Having progressed only to a special third grade class for slow learners by the age of 16, he is an illiterate who can neither read nor write, nor sign his name in full without often misspelling it.

Medical and scientific tests indicate that Culombe is an imbecile or a moron, and a feeble-minded person with an intelligence quotient of 60, or a mental age of nine to nine and a half years; that he is and always has been a highly suggestible person, easily led, with a lack of understanding and judgment; and that for a long period of time he suffered from a brain abnormality. He is of adult age, with a child's mind (T. 1163 ff, 1175 ff, 1180 ff, 1182, 1184 ff, 1199 ff, 1217 ff, 1221 ff, 1289, 1294-5, 1311, 1317-1323; Culombe's Exhibits 7, 8, 9, 10, 11).

This court has considered mental defects as important in evaluating whether a confession is coerced. *Payne* v. *Arkansas,* 356 U.S. 560, 567 (mentally dull 19-year-old); *Fikes* v. *Alabama,* 352 U.S. 191, 193 (mental illness and low mentality); and *Blackburn* v. *Alabama,* 361 U.S. 199 (psychosis). It is submitted that the nature and extent of petitioner's defect reduced his power of resistance and made him easy prey for the sustained questioning and psychological pressures of the police. *Stein* v. *People of the State of New York,* 346 U.S. 156, 185.

(2) *Sustained Interrogation.* The State Police began questioning Culombe on Saturday, February 23, 1957, with the object of obtaining a confession (T. 399). Petitioner was interrogated for five days at the end of which time he confessed. This questioning was generally in intervals of three to six hours, which were connected by trips with the police to obtain evidence, by trips to the New Britain Police Headquarters and Police Court, and by meals with the police. When awake, he was rarely left alone.

On Saturday, petitioner was questioned from 2:30 P.M. until midnight. On Sunday, he was questioned for several hours in the afternoon and evening. He was again questioned on Monday in the morning and intermittently after his return from the New Britain Police Headquarters until some time in the evening, a total of four to seven hours. On Tuesday, he was questioned continuously for 7 hours. This particular questioning period was characterized by Lt. Rome's assistant as an "ordeal." On the day of the confession (Wednesday), petitioner was questioned from 1:30 P.M. until the early hours of the following morning (Thursday). The questioning was performed in relays by teams of police (T. 257), or by single officers.

At the end of this extended questioning petitioner signed a confession (State's Exhibit Z-1), admitting that he was present at the time of the crime.

This court has repeatedly held that persistent questioning raises the issue of the involuntariness of a confession. *Turner* v. *Pennsylvania*, 338 U.S. 62, 63-65; *Johnson* v. *Pennsylvania*, 340 U.S. 881. In *Turner*, the defendant was subjected to five days of relay questioning from four to six hours a day, no single period exceeding three hours—a total of 23 hours. In *Johnson*, the defendant was questioned for a total of six hours during a five-day period, in sessions of fifteen minutes to one and one-half hours. *Johnson* v. *Pennsylvania, supra*, referring to *Comm.* v. *Johnson*, 365 Pa. 303, 312-313. In the case at bar, Culombe was questioned for five days for a total exceeding 31 hours.

In addition, there was the cogent factor that he was a mental defective.

(3) *Illegal Police Procedures and Delaying Tactics.* It is submitted that the methods by which the State Police managed to question the petitioner for five days before

presenting him on the charge of murder is most relevant to the question of coercion.

Although taken into custody early Saturday afternoon, petitioner was not officially arrested until 10 P.M. that night. This arrest was made under Conn. Stat. §195d (1955 Supp.), *infra*, Appendix A, p. A-1, which empowers members of the state police department to arrest, without previous complaint and warrant, any person who such officer has reasonable grounds to believe has committed a felony. This statute also requires that a person arrested thereunder "shall be presented with reasonable promptness before proper authority."

According to Lt. Rome of the State Police, Culombe could have been booked on Sunday at Police Headquarters and presented in court on Monday (T. 333-334). This would have been in accordance with the rules of the State Police, which state:

> "In the State Police Department, it is our policy to present any person arrested before proper authority within 24 hours of the arrest unless some urgent circumstances requires a longer detention." Connecticut State Police training school lectures, quoted in Wright & Reardon, *Connecticut Police and Prosecutors Manual* 52 (1959).

In fact, Culombe was not presented until Tuesday noon, 86 hours after formal arrest and 94 hours after being taken in custody. Lt. Rome testified that this deliberate delay was to enable the State Police to question Culombe longer (T. 332-334).

It is also the practice of the state police to make an entry in a Log Book when an arrest is made (T. 534-535). The fact that Culombe's arrest Saturday night was not recorded in this Log Book (T. 536, 545) is evidence of

another deviation from standard procedures, thus depriving the accused of an objective record of the specific time he was arrested without warrant.

When petitioner was finally presented on a holding charge of breach of the peace, he was taken through crowds to the New Britain Police Court, put in a wire cage at the rear of the court, was not presented before the bench, was cut off from view of the bench by a large crowd of spectators and photographers, and was not advised of any of his constitutional rights and privileges. He was charged with breach of the peace, placed under $25,000 bond, and the case was continued until the following week, without plea being entered. Throughout this proceeding no counsel was furnished Culombe, notwithstanding the fact that he was promised one by Lt. Rome (T. 648), and notwithstanding the fact that Conn. Stat. §8796 (1949), *infra,* Appendix A, p. A-1, authorizes the public defender to appear on behalf of an accused in such a local court. The State Police exploited this mock proceeding to their advantage. By obtaining a continuance the police were thus able to continue their sustained interrogation for 36 hours. Had counsel been furnished to Culombe, cogent argument could have been made that the case either be dismissed or tried at that time, or in the alternative a writ of habeas corpus could have issued. Without counsel, petitioner was prevented from participating in this proceeding.

Furthermore, a mittimus was issued by the New Britain Police Court directing that Culombe be taken to Hartford County Jail until released by due process of law. The State Police, however, did not take him directly to the county jail. Instead, they brought him to State Police Headquarters and questioned him there for six hours. The following day, Wednesday, at 10 A.M., the police unlawfully removed him from the jail and transported him, as if a chattel, to Headquarters for further questioning.

*Significantly, the trial court made a specific and unequivocal finding that Culombe was illegally detained, "in so far as the so-called borrowing from the jail is concerned"* (T. 952).

Delays in presentment and illegal detentions are relevant factors in determining the admissibility of confessions. *Payne* v. *Arkansas,* 356 U.S. 560, 567; *Fikes* v. *Alabama,* 352 U.S. 191, 197; *Turner* v. *Pennsylvania,* 338 U.S. 62, 64; and *Stein* v. *New York,* 346 U.S. 156, 187. After holding Culombe on suspicion of felony for two days, they delayed presenting him before proper authority for an extra twenty-four hours so as to gain time for additional interrogation. Then, following the New Britain police court proceeding, the police illegally detained him and then subjected him to an "ordeal" of questioning. Failing in their efforts to obtain a confession during this period, they illegally removed Culombe from jail the next day and kept him for fourteen hours until he confessed. With confession in hand, the police finally brought him before the Superior Court, where he was formally charged with the murder about which he had been interrogated for the preceding five days.

(4) *Use of Wife and Family.* The coercive tactics of the State Police are further illustrated by the recurrent use of petitioner's wife and two minor daughters as a means of extracting a confession. Mrs. Culombe was questioned at home Saturday night, and at State Police Headquarters Sunday and Monday nights. Lt. Rome admitted that he used Mrs. Culombe to obtain a confession, and that she was in fact a help when, on Tuesday night, she confronted her husband and told him to confess (T. 370-371). Cf. *Spano* v. *People of the State of New York,* 360 U.S. 315, 318-319. Culombe's thirteen-year-old daughter was also asked in petitioner's presence to repeat statements which incriminated her father (T. 553). Further, the knowledge

of the presence at Headquarters of his sick five-year-old daughter depressed him (T. 529-533). This studied and calculated use of the wife and two children had a decisive and obviously coercive effect in compelling the accused to confess, so as to spare his family the further embarrassment, shame, and anxiety they were caused to suffer at the hands of the police authorities (T. 589, 598).

(5) *Language of Confession.* Contributing to the evidence of the coercive action of the police was the fact that the confession was not in Culombe's language and syntax, but in that of his interrogator, Lt. Rome. *Blackburn* v. *Alabama,* 361 U.S. 199, 207-208. Such a confession is bound to be colored by the purpose of the questioner.

(6) *Lack of Counsel.* Throughout this entire five-day period Culombe was without counsel. He expressly asked for counsel on Saturday, but allegedly because he did not name any specific attorney, the State Police declined to call anyone. It is undisputed that Lt. Rome broke his express promise to provide him counsel on Monday (T. 546, 638). In total, Culombe asked for counsel on six occasions. Lack of counsel for whatever reason is relevant to the question of coercion. *Haley* v. *Ohio,* 332 U.S. 596, 598, 600-1; *Payne* v. *Arkansas,* 356 U.S. 560, 567; *Blackburn* v. *Alabama,* 361 U.S. 199, 207.

Each of these factors: (1) petitioner's feeble-mindedness; (2) the relentless and intensive questioning over a five-day period; (3) the illegal removal and detention; (4) the direct use of Culombe's wife and children; (5) the ghosted language of the confessions; and (6) lack of counsel—may singly be sufficient to prove coercion. This court has consistently discountenanced each and every one of the foregoing factors as being constitutionally obnoxious.

Certainly, cumulatively and jointly they portray a procedure so corrupt with defects in the denial of due process, so violative of the basic legal and constitutional rights of the accused that, under no circumstances, could the confession obtained thereby be considered but involuntary and unreliable.

Although this confession (Exhibit Z-1) was not admitted into evidence as a full exhibit, the use made of this confession could hardly have been more effective had its details been put into evidence. It was substantially incorporated verbatim as Exhibit Z (T. 962-963). Exhibit Z-1 was referred to during the trial as the basis for Exhibit Z (T. 962-963). This court has held that a coerced confession, even though it is not admitted into evidence, is a sufficient reason for reversal if it has not been insulated from the trial. *Malinski* v. *New York*, 324 U.S. 401, 407-410.

The use of this confession denied petitioner of his constitutional rights under the due process clause of the Fourteenth Amendment.

## II.

**The Admission of the Confession of Monday, March 4, 1957, Coerced by Police Trickery and Made Without Benefit of Retained Counsel Four Days After a Formal Charge of Murder, Violated Due Process of Law.**

This case poses the issue as to what extent defendant's constitutional right to retained counsel should be protected after he has been formally charged with the crime of murder.

Culombe was charged with murder on Thursday, February 28 in the Superior Court for Hartford County (T. 1022). The court appointed a Special Public Defender

to act as petitioner's counsel. After this hearing he was no longer a mere suspect. Cf. *Crooker* v. *California*, 357 U.S. 433 with *Spano* v. *People of the State of New York*, 360 U.S. 315, 325.

The police were not satisfied with the form of the statement which had been elicited Wednesday night, February 27, 1957 (State's Exhibit Z-1). It was decided at a conference between Lt. Rome and his superior officer to prepare a copy of that statement which would exclude all information not relevant to the New Britain crime. This was prepared on Sunday, March 3 (T. 503).

On Monday, March 4, Lt. Rome took this excerpted copy to the county jail to get Culombe's signature (T. 505).

On the previous afternoon, if not prior thereto, the Special Public Defender held a conversation with Lt. Rome in which he ordered the state policeman to remove Culombe from the State Police Headquarters and return him to the county jail (T. 507). McDonough also explicitly directed Lt. Rome to leave Culombe alone and not bother him any more (T. 507).

In defiance of this permissible and reasonable order by defendant's counsel, Lt. Rome took the prefabricated confession to the jail the next day. After Rome explained and read it aloud, Culombe signed it. Before he signed it, however, Culombe questioned Rome about his counsel not being there, and Rome answered that it was "okayed" by the Special Public Defender, which was untrue.

In manifest disregard of the ideal standards of honesty, fairness and decency established for law enforcement bodies, Lt. Rome, for the purpose of securing his execution of the revised confession, used fraud and deceit in depriving petitioner of the services of his court-appointed counsel. That this was not an act of inadvertence or

thoughtlessness became clear during the murder trial when Lt. Rome testified that "he didn't think it was necessary" to notify Culombe's counsel of his intention to obtain a confession from the defendant (T. 510-511). When asked whether the Special Public Defender had asked him to leave Culombe alone, Lt. Rome contemptuously responded, "I don't take my orders from Mr. McDonough," using a tone of voice which brought an admonition from the court (T. 507).

It has been often judicially noted that our system of justice may be abused by overzealous prosecutors or police. At certain stages in the judicial proceedings a defendant's constitutional rights can only be secured through counsel, whose knowledge of the intricacies of criminal law and procedure gives protection from such abuse. Such important rights were violated or disregarded in the handling of this case. *Watts* v. *Indiana*, 338 U.S. 49, 54.

In a capital case a defendant has an absolute right to counsel at trial. *Powell* v. *State of Alabama*, 287 U.S. 45. Effective counsel has also been held to be a constitutional right at stages prior to trial. *Chandler* v. *Fretag*, 348 U.S. 3, 9, 10. In a recent decision this court said:

> Under our system of justice an indictment is supposed to be followed by an arraignment and a trial. At every stage in those proceedings the accused has an absolute right to a lawyer's help if the case is one in which a death sentence may be imposed. . . . Indeed, the right to the assistance of counsel whom the accused has himself retained is absolute whatever the offense for which he is on trial. *Spano* v. *New York*, 360 U.S. 315, 327.

It is submitted that the admissibility of the Monday morning confession (Exhibit Z) at petitioner's murder trial

presents the same important issues of constitutional rights which pervaded *Spano*.

There is no claim that petitioner had an absolute right to counsel during the first five days of questioning. The claim of denial of counsel is directed, as in *Spano*, to that period after petitioner had been formally charged with murder, after the court had designated his counsel, and after such counsel had explicitly ordered the police to stop interrogating him. The elicitation of a confession under such conditions raises grave constitutional questions.

The aggravated circumstances surrounding the denial of counsel at the time of this confession present an even more serious breach of due process, which amount to coercion. Culombe had been interrogated intermittently for nine days when this prefabricated confession containing the paraphrasings of Lt. Rome was proffered for his signature. Not only did the police fail to inform petitioner's counsel of the proposed statement, thereby assuring his absence, but they falsely represented that he had given permission for his client to sign the document. The use of chicanery in gaining a confession from an accused after he has been formally charged with murder has recently been attacked by this court. *Spano* v. *New York*, 360 U.S. 315. Here, the deceit was used not only to obtain petitioner's signature, but also to allay his fear stemming from the fact his counsel was not present.

Furthermore, the subject of this secret interrogation was an illiterate, highly suggestible moron who had never passed the third grade. This court has considered the psychological disabilities of a defendant as an important factor in determining whether or not there has been a constitutional denial of counsel where the need for such is

compelling. *House* v. *Mayo*, 325 U.S. 42, 45; *Spano* v. *People of the State of New York*, 360 U.S. 315, 325.

The admission into evidence of a confession obtained through deceitful practices which effectively denied counsel to the mentally-defective accused deprived petitioner of his life without due process of law.

## III.

**The Admission of the Confession of Sunday, March 3, 1957 Made as a Result of Psychological Pressures in the Absence of Court-Appointed Counsel Three Days After Petitioner Was Formally Charged With Murder Violated Due Process of Law.**

This case, in its third phase, presents the issue of whether or not a confession extracted from a highly suggestible mental defective three days after a formal charge of murder had been lodged is inadmissible by reason of the psychological pressures used by the police in the absence of court-appointed counsel.

Culombe had been formally charged with murder on Thursday, February 28. The court appointed a Special Public Defender, Attorney McDonough, on Friday. On that day, or Saturday, McDonough saw Culombe for the first time. He had never had any contact, professional or otherwise, with Culombe before that date (T. 675).

On Sunday morning, March 3, 1957, Culombe was brought upstairs to the interrogation room in State Police Headquarters. At this time, Culombe had been under arrest for eight days. There Culombe signed a confession (State's Exhibit EE) in which it was admitted he killed the gas station attendant.

From his arrest until this confession the petitioner was never, with the exception of a night in County Jail, wholly

removed from the constant observation, influence, custody and control of those whose persistent pressure brought about the Sunday confession. Cf. *Chambers* v. *Florida*, 309 U.S. 227, 239-240. For eight days he had been interrogated by many experienced officers of the State Police. On the previous morning he had been subjected to an intensive two-hour analysis by a state-appointed doctor and psychiatrist. Within twenty-four hours Culombe had signed a revised and highly damaging written confession.

This confession came at a time when Culombe had been formally charged with murder, and when the State had appointed counsel. Attorney McDonough was not present when this confession was elicited, nor was he notified by the police that such a statement was to be taken.

There is no evidence as to whether Culombe did or did not ask to see his attorney before signing the confession. Certainly, if he had asked, and his request denied, such action would have made this confession inadmissible under the concurring opinions of *Spano*.

Assuming, *arguendo*, that Culombe did not ask for counsel, the confession is still inadmissible in the form in which it was taken.

Lieutenant Rome and other officers were present in the interrogation room of State Police Headquarters when this confession was made. The system used for constructing the confession was as follows: Rome would ask a question; Culombe would answer; Rome would paraphrase the answer in narrative form; and then this narrative was typed, read to Culombe, and signed (T. 1092).

Officer Fersch, the typist, testified that most of the language and syntax contained in the confession were those of Lieutenant Rome (T. 920). Fersch stated that the statement was not the statement of Arthur Culombe, but that of

Lieutenant Rome. Furthermore, Officer Fersch stated that he could have typed what Culombe had said, which was understandable, had Lieutenant Rome not ordered him to use Rome's words and construction (T. 920-922).

The State Police were well aware that the subject of this interrogation was a mental defective (T. 1317). They knew, from the experience of eight days' close questioning, that he was (as the psychiatrist and psychologist later verified) a highly suggestible, easily-led individual (T. 1308).

It was in this context that a confession, formed in the words and syntax of an experienced police officer bent on obtaining a confession, was signed by the illiterate petitioner. A comparison of Culombe's testimony (T. 607 ff) and the confession (T. 1094 ff) indicate the marked difference in grammar and vocabulary.

Culombe's attorney, who was not present, could not warn Culombe that statements obtained in the manner herein would tend to be partisan to the prosecution. As the esteemed Federal Judge J. Joseph Smith pertinently held in striking down a confession:

> "Statements elicited during questioning are bound to be colored to some extent by the purpose of the questioner who inevitably leads the witness in the absence of court control. This coloring is compounded where the statement is not taken down stenographically, but written out as a narrative in language supplied by the questioner. Where the state of mind of the defendant is an issue in the case, as in determining the degree of homicide, the wording of his account of the crime is of vital importance." *United States ex rel. Reid* v. *Richmond,* Civil Action 7845, Memorandum of Decision, page 7 (Dist. Conn. 13 July, 1960).

Culombe's counsel was not notified by the police that this statement was to be taken. Thus, he could not advise Culombe of the danger to one on trial for life of adopting the language of another in a statement signed by Culombe. Petitioner did not have the mental acuity to understand the need for the presence of counsel in such a situation. As Dr. Ibelle, court-appointed psychologist, testified:

> "All testing is consistent in indicating that this is clearly a feeble-minded individual whose adjustment, both personal and social could be at best marginal. His performance is that of a middle grade moron and he can be properly labeled moderately defective. In addition to being saddled with deficient mental equipment with which he must try to cope with life's problems, Mr. Culombe is also possessed of the character defect so frequently found in individuals of low intellectual caliber. He is enormously suggestible. Thus, lacking in the capacity for sufficient critical judgment his manner of thinking, his pattern of living and his way of behaving can all be easily influenced by those persons closest to him" (T. 1189).

In this case, after a formal charge of murder, the need for retained counsel became more exigent, particularly when a mentally defective, illiterate person is pitted alone against the skillful and oppressive measures of overzealous police.

It is submitted that petitioner was deprived of his life without due process of law because this confession, constructed under aggravated circumstances in the phraseology of an experienced police lieutenant in the absence of counsel, was admitted into evidence.

## Conclusion

In conclusion, on the evidence, facts, and law, it is respectfully prayed that the judgment of conviction and sentence of death herein, as well as the judgment of the affirmance thereof, be reversed and set aside.

Respectfully submitted,

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* Grateful acknowledgment is herewith made for the assistance rendered by Thomas A. Williams, of the Yale Law School Public Defender Committee.

## APPENDIX A

Conn. Stat. §195d (1955 Supp.) [now Conn. Stat. §6-49 (1958)]. *Arrest without warrant.* Sheriffs, deputy sheriffs, county detectives, constables, borough bailiffs, police officers, special protectors of fish and game and railroad and steamboat policemen, in their respective precincts, shall arrest, without previous complaint and warrant, any person for any offense in their jurisdiction, when such person is taken or apprehended in the act or on the speedy information of others, and members of the state police department or of an organized local police department or county detectives shall arrest, without previous complaint and warrant, any person who such officer has reasonable grounds to believe has committed or is committing a felony. Any person so arrested shall be presented with reasonable promptness before proper authority.

Conn. Stat. §8796 (1949) [now Conn. Stat. §54-80 (1958)]. *Public defender.* The judges of the superior court shall, at each annual meeting in June, appoint an attorney at law, of at least five years' practice and residence, in each county in the state, except New Haven county, in which they shall appoint one such attorney for the New Haven district and one for the Waterbury district, to be public defenders thereof for the ensuing year and shall, from time to time, make rules and regulations necessary for the conduct of such office. Each such public defender shall act as attorney in the defense of any person charged with crime in either the superior court or the court of common pleas for the county for which he has been appointed, when such person is without funds sufficient to employ counsel for such defense. The public defender may, in accordance with the rules and regulations adopted by the judges of the superior court, act, within the county or district for which he has been appointed, as attorney for the defense of any such

accused person upon any preliminary hearing before any court in the state or before any committing magistrate. Any vacancy in the office of public defender shall be filled by the chief justice until the next annual meeting of the judges of the superior court.